



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No. : 10/068,574
Appellants : Christopher James Brown et al.
Filed : February 5, 2002
TC/A.U. : 3643
Examiner : Kurt C. Rowan

Confirmation No. 8161

Docket No. : 02-440
Customer No. : 34704

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313

RECEIVED
SEP 05 2003
GROUP 3600

14 AF
Appeal
Brief
(3)
Cofa
9-12-03

APPEAL BRIEF

Sir:

This is an appeal to the Board of Patent Appeals and Interferences from the final rejection made by the Primary Examiner in Group Art Unit 3643, dated April 3, 2003, finally rejecting claims 21 – 33.

REAL PARTY IN INTEREST

The real party in interest is Cabela's Inc. of Sidney, Nebraska.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to Appellants, Appellants' legal representatives, or Assignee which will directly affect, or be directly affected by, or have a bearing on the Board's decision in the pending appeal.

STATUS OF CLAIMS

Claims 1 – 20 have been cancelled and claims 21 – 33 are pending in the application. Currently, claims 21 – 33 stand rejected. A copy of the claims on appeal appear in the attached Appendix.

09/04/2003 MAHME1 00000013 10068574

01 FC:1402

320.00 DP

STATUS OF AMENDMENTS

An amendment after final rejection was filed on June 30, 2003. In an advisory action mailed July 28, 2003, the Primary Examiner stated that the proposed amendments would not be entered for the purposes of appeal.

SUMMARY OF THE INVENTION

The present invention relates to an animal decoy such as that shown in FIGS. 1 and 4 of the application. As stated on page 2 of the specification, lines 6 – 10, one embodiment of the present invention comprises a three-dimensional animal decoy body having photographic, realistic details. The animal is comprised of an outer polymeric shell enclosing a volume of space, shaped like a body of the animal. The polymeric shell is printed with features of the animal that has been photographed.

As set forth on page 3, lines 2 – 17 and as shown in FIGS. 1 – 3, the method for making the three dimensional animal decoy comprises photographing an array of two-dimensional views of an animal that is to be the subject of the decoy, arranging and adjusting the photographic views of the array to make a three-dimensional, flattened aerial view of the animal such as is illustrated at 10 in FIG. 1, printing a screen template with at least one image of the aerial view 10, providing a three dimensional vacuum mold 24 having a shape of the body of the animal which is the subject of the decoy as is illustrated at 20 in FIG. 2, printing the aerial view image 10 imparted to the screen template onto a polymeric sheet 22; applying the polymeric sheet 22 to the vacuum mold 24 so that the three dimensional feature representations of the aerial view image 10 on the sheet 22 will correspond to their positions on a live animal body once the fabrication is complete; heating the polymeric sheet 22 to soften the polymeric material of the sheet such as is shown at 30 in FIG. 3a, and applying pressure to the heated sheet in order to make a three-dimensional animal shell decoy body that has multiple, photographic, realistic details of a living animal, such as is shown at 32 in FIG. 3b.

As set forth on page 3, lines 18 – 23 of the specification, the decoy body 32 is comprised of a polymeric shell that is resistant to damage from elements of the out-of-doors such as ultraviolet light. The decoy body 32 may be one of a variety of animals of any age. The decoy body shown in FIG. 4 is attached to a head 34 to form an adult goose decoy 40.

As set forth on page 3, lines 24 – 28 of the specification, the present invention further includes a kit comprising the three dimensional body 32 and an animal head 34 for attachment to the body 32. In one embodiment, the body 32 defines a hole 36. The head 34 terminates in a flange (not shown) that is insertable into the hole 36.

The decoys of the present invention appear to be living animals in a stationary position.

As set forth on page 4, lines 9 – 13 of the specification, the decoy of the present invention may have a shape of virtually any animal including ducks of all species, geese of all species, turkeys, squirrels, deer, or other animals. The animal decoy may be fabricated to have a position such as a resting or swimming position. The decoy may represent an animal at one of an assortment of ages.

As set forth on page 4, lines 17 – 22, of the specification, the individual fowl which is photographed for the decoy 40 in FIG. 4 is photographed to obtain views that include a left side and a right side. Additional photos are taken of a top view, a front view, and a rear view of the actual animal. The photos are preferably taken from a common distance so that all views have the same perspective. The views may be taken using a living animal or an animal that has undergone taxidermal treatment.

As set forth on page 4, lines 23 et seq. of the specification, the photographs may be black and white or may be color photographs.

Referring now to page 5, lines 1 – 15, of the specification, the array of photographic views are arranged with the assistance of a compute-aided design program to make a single view such as is shown at 10 in FIG. 1. The single view is “an aerial flattened view” by which is meant that the image 10 may be placed on a three dimensional form and assume the three dimensional appearance of the body of the animal. The aerial flattened view contains corrections incorporated by corrected algorithms to account for stretching of the aerial view and contraction of the aerial view during molding. These corrections include corrections for shrinking decoy features such as feathers 16 in order to produce a life-like three dimensional image once the view is printed and molded to form the decoy body 32.

As set out on page 5, lines 16 et seq., of the specification, the aerial flattened view 10 is preferably transferred to a screen by a process such as screen printing. The screen imparts the view 10 by screen printing to a polymeric sheet. The polymeric sheet is flexible enough to position about the decoy mold 24 but rigid enough to be utilized in a printing process. The

plastic polymer used in the sheet is resilient in outdoor conditions and is stretchable when heated. Since the image 10 is screen printed onto the polymeric sheet which forms the main body of the decoy, it can be said that the animal features are non-adhesively incorporated into the main body of the decoy.

As set out on page 7, lines 12 – 13 of the specification, the surface of the decoy body is embossed to simulate features such as feathers.

As set out on page 7, line 24 et seq. of the specification, the decoy head 34 is separately fabricated. Typically, the decoy head 34 is fabricated by molding a polymeric material. Features such as eyes may be painted onto the decoy head. The decoy head may terminate in a flange that is insertable into the orifice 36. In one embodiment, the decoy head 34 is reversibly inserted into the decoy body 32. With this embodiment, a hunter may use an array of decoy heads with one decoy body 32. In another embodiment, the decoy head 34 is permanently attached to the decoy body.

REFERENCES RELIED UPON BY THE EXAMINER

<u>Patent No.</u>	<u>Inventor(s)</u>	<u>Issue Date</u>
3,029,541	Palmer	April 17, 1962
3,707,798	Tryon	January 2, 1973

REJECTION(S) OF RECORD

1. Claims 21 – 26, 28, and 29 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tryon.
2. Claims 27 and 30 – 33 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Tryon as applied to claims 21 – 26, and further in view of Palmer.

ISSUES

1. Is the subject matter of claims 21 – 26, 28, and 29 obvious over the teachings of Tryon?
2. is the subject matter of claims 27 and 30 – 33 obvious over the combination of Tryon and Palmer?

GROUPING OF CLAIMS

Claims 21, 22, 23, 24, 27, 28, 29, 30, and 31 are each independently and separately patentable.

Claims 25 and 26 stand or fall with claim 21.

Claims 32 and 33 stand or fall with claim 30.

ARGUMENT

A. CLAIM 21 IS PATENTABLE OVER TRYON

Claim 21 relates to a decoy comprising a three dimensional body and a photograph containing animal features *non-adhesively* incorporated into the main body. Tryon simply does not teach or suggest such a decoy. Tryon is directed to a goose decoy comprising a form upon which is mounted a color photoreproduction of an actual goose. As set forth in column 3, lines 18 et seq. of Tryon, following the formation of the printed photographs, the same are applied to the body and wing portions of the silhouette and held in place thereon by means of a suitable adhesive. The fact that an adhesive is used is acknowledged by the Examiner in making his rejection. The Examiner goes on to say however that it would have been obvious to employ other means to attach the photographs since the function is the same. In Appellants' opinion, the rejection fails because the Examiner has not cited any reference which would teach or suggest *non-adhesively incorporating the photograph containing the animal features into the main body*. Further, the rejection is deficient because the Examiner provides no statement as to what would motivate one to make such a modification.

B. CLAIM 22 IS PATENTABLE OVER TRYON

Claim 22 depends from claim 21 and adds the limitation that the photograph is screen printed onto the main body. The rejection made by the Examiner fails with respect to this claim because the Examiner has not cited any reference which teaches or suggests incorporating a photograph into a decoy body by screen printing.

C. CLAIM 23 IS PATENTABLE OVER TRYON

Claim 23 depends from claim 21 and adds the limitation that the main body is formed from a flexible material. The rejection of this claim fails because Tryon does not teach or

suggest non-adhesively incorporating a photograph into a main body formed from a flexible material.

D. CLAIM 24 IS PATENTABLE OVER TRYON

Claim 24 depends from claim 21 and adds the limitation that the main body is embossed with animal features. It is submitted that this claim is allowable over Tryon because Tryon does not teach or suggest forming embossed animal features on the decoy body. While the Examiner points to the eyes in Tryon as being an embossment, a review of the patent shows that the eyes are part of the photograph adhesively applied to the sides of the decoy.

E. CLAIM 28 IS ALLOWABLE OVER TRYON

Claim 28 is directed to a decoy having a three dimensional body formed from a plastic material, which main body has on its exterior surfaces a screen printed photograph containing animal features. This claim is allowable because Tryon does not teach or suggest a decoy having a main body with a *screen printed photograph containing animal features* on the decoy exterior surfaces. The Tryon patent is totally silent on the concept of screen printing and the Examiner has not cited any secondary reference which would teach this aspect of the present invention. As discussed above, the photographs in Tryon are adhesively mounted to the decoy body. Still further, the Examiner has not indicated what would motivate one of ordinary skill in the art to provide the Tryon decoy with photographs screen printed onto the exterior surfaces of the decoy.

F. CLAIM 29 IS ALLOWABLE OVER TRYON

Claim 29 depends from claim 28 and adds the limitations that the screen printed photographs contain corrections to allow the photographs to be screen printed onto the main body. There is nothing in Tryon which would teach or suggest this aspect of the present invention. In fact, in Tryon, excess portions of the photographs are trimmed off. See column 3, lines 27 – 32 of Tryon. The rejection fails because the Examiner has not cited any reference which would teach or suggest correcting the screen printed photographs and does not provide any statement as to what would motivate one having Tryon before him to have this feature.

G. CLAIMS 27, 30 AND 31 ARE ALLOWABLE

OVER TRYON IN VIEW OF PALMER

Claim 27 depends from claim 21 and adds the limitations that the main body has an orifice and that the decoy has a head with a flange which is insertable into the orifice. Clearly, Tryon does not have such a structure. Palmer does disclose a decoy with a removable head. However, it is submitted that one of ordinary skill in the art would not be motivated to combine the two references in the manner suggested by the Examiner. Most notably, in Tryon, the head portion of the decoy contains a portion of the photograph which is adhesively attached to the decoy body. If one were to make the head so that it can be inserted into the decoy, the possibility of removing the head would be lost once the photograph is attached to the head portion. Under such circumstances, one could only remove the head by tearing the photograph – something which is clearly undesirable.

Claim 27 is allowable further because Palmer does not overcome the deficiencies of Tryon with regard to the photograph being non-adhesively incorporated into the decoy body. Palmer does not use photographs as part of his decoy.

Claim 30 is allowable over the combination of Tryon and Palmer because neither of the cited or applied references teaches or suggests a decoy having a main body with a photograph containing animal features *incorporated therein*. With regard to the main body having an orifice and the decoy having a head with a flange insertable into the orifice, Palmer shows such a feature; however, one of ordinary skill in the art would not be motivated to modify Tryon to have such a feature for the reasons expressed above with respect to claim 27. The advantage of such a feature would be lost in Tryon once the photograph is adhesively attached to the head portion and the body portion.

Claim 31 is allowable over the proposed combination of Tyron and Palmer because neither patent teaches or suggests a kit having a plurality of heads. Each of the patents is directed to a decoy having a single head. The Examiner does not provides a sufficient statement as to what, other than Appellants' disclosure, would motivate one of ordinary skill in the art to provide a kit with multiple heads.

CONCLUSION

For the reasons stated above, claims 21 – 33 are believed to be in condition for allowance. The Board is hereby requested to reverse the rejection made by the Primary Examiner and remand the case to the Primary Examiner for issuance.

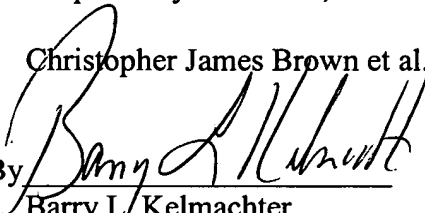
APPEAL BRIEF FEE

A check in the amount of \$320.00 is enclosed herewith to cover the cost of the Appeal Brief Fee. Should the Commissioner determine that an additional fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02 – 0184.

Respectfully submitted,

Christopher James Brown et al.

By



Barry L. Kelmachter

BACHMAN & LaPOINTE, P.C.

Reg. No. 29,999

Attorney for Applicants

Telephone: (203)777-6628 ext. 112

Telefax : (203)865-0297

Date: August 28, 2003

IN TRIPLICATE

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: "Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313" on August 28, 2003.


Nicole Motzer

APPENDIX

21. A decoy comprising a three dimensional main body and a photograph containing animal features non-adhesively incorporated into said main body.

22. A decoy according to claim 21, wherein said photograph is screen-printed onto said main body.

23. A decoy according to claim 21, wherein said main body is formed from a flexible material.

24. A decoy according to claim 21, wherein a surface of said main body is embossed with animal features.

25. A decoy according to claim 21, wherein said animal features are selected from a group consisting of ducks, geese, pheasants, deer, moose, antelope, squirrels and elk.

26. A decoy according to claim 21, wherein said animal features include an animal in at least one of a swimming position and a resting position.

27. A decoy according to claim 21, wherein said main body has an orifice and wherein said decoy further comprises a head having a flange which is insertable into said orifice.

28. A decoy having a three dimensional main body formed from a plastic material and said main body having on its exterior surfaces a screen printed photograph containing animal features.

29. A decoy according to claim 28, wherein said photograph contains corrections to allow said photograph to be screen printed onto said main body.

30. A kit comprising a three-dimensional decoy main body having incorporated therein a photograph containing animal features, an orifice in said main body, and at least one head having a flange insertable into said orifice.

31. A kit according to claim 30, further comprising a plurality of heads with a flange insertable into said orifice.

32. A kit according to claim 30, wherein said main body is duck shaped and said photograph has duck features.

33. A kit according to claim 30, wherein said main body is goose shaped and said photograph has goose features.